



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2007-0602; FRL-9912-83-Region-4]

#### Approval and Promulgation of Implementation Plans for North Carolina: State Implementation Plan Miscellaneous Revisions

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve the portions of a revision to the North Carolina State Implementation Plan (SIP), submitted by the North Carolina Department of Environment and Natural Resources (NC DENR) on February 3, 2010, that incorporate changes to the state rules reflecting the 2006 national ambient air quality standards (NAAQS) for particulate matter (PM). EPA approved the remaining portions of North Carolina's February 3, 2010, SIP revision in a previous rulemaking.

**DATES:** This rule will be effective on [insert 30 days after date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2007-0602. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not

publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Nacosta Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9140. Ms. Ward can be reached via electronic mail at [ward.nacosta@epa.gov](mailto:ward.nacosta@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

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##### **I. This Action**

EPA is taking final action to approve the portions of North Carolina's February 3, 2010, SIP revision that relate to the PM<sub>2.5</sub> and PM<sub>10</sub> NAAQS (collectively referred to as the "PM NAAQS"). On May 16, 2013, EPA published a direct final rule approving the portions of North Carolina's February 3, 2010, submission that incorporate amendments to state rules 15A NCAC 02D .0405, .0408, .0409, and .0410 reflecting the NAAQS for ozone, lead, and PM in effect at the time of submittal. *See* 78 FR 28747.

EPA published an accompanying proposed approval to the May 16, 2013, direct final rule in the event that EPA received adverse comment and withdrew the direct final rulemaking. *See* 78 FR 28775. In the direct final rule, EPA stated that if adverse comments were received by June 17, 2013, the rule would be withdrawn and not take effect, the proposed rule would remain in effect, and an additional public comment period would not be instituted.

On May 23, 2013, EPA received comments from a single commenter solely on the portions of the rulemaking related to the PM<sub>2.5</sub> NAAQS; therefore, EPA withdrew the PM portions of the direct final rule. *See* 78 FR 41850 (July 12, 2013). The withdrawal of the PM portions did not affect EPA's May 16, 2013, direct final action on North Carolina's SIP revisions related to the ozone and lead NAAQS. EPA is now taking final action to approve only the portions of the February 3, 2010, SIP revision related to the PM NAAQS. EPA has reviewed the changes to North Carolina Rules 15A NCAC 02D

.0410 “PM<sub>2.5</sub> Particulate Matter” and 15A NCAC 02D .0409 “PM<sub>10</sub> Particulate Matter” and determined that these changes are consistent with federal regulations in effect at the time of SIP submission; thus, EPA is approving these revisions to the North Carolina SIP.

## **II. Background**

EPA approved a North Carolina’s SIP revision on October 22, 2002, that adopted the 1997 24-hour PM<sub>2.5</sub> NAAQS and 1997 annual PM<sub>2.5</sub> NAAQS set at 65 micrograms per cubic meter (µg/m<sup>3</sup>) and 15 µg/m<sup>3</sup>, respectively. *See* 67 FR 64990. On October 17, 2006, EPA revised the 24 hour PM<sub>2.5</sub> NAAQS to 35 µg/m<sup>3</sup> and retained the annual PM<sub>2.5</sub> NAAQS at 15 µg/m<sup>3</sup>.<sup>1</sup> *See* 71 FR 61144. Accordingly, NC DNER submitted a SIP revision on February 3, 2010, that, among other things, incorporates revisions to state rule 15A NCAC 02D .0410 “PM<sub>2.5</sub> Particulate Matter” that update the rule for consistency with the 2006 PM<sub>2.5</sub> NAAQS.

EPA approved a North Carolina SIP revision on January 16, 1990, that adopted the initial 1987 24-hour PM<sub>10</sub> NAAQS and 1987 annual PM<sub>10</sub> NAAQS set at 150 µg/m<sup>3</sup> and 50 µg/m<sup>3</sup>, respectively. *See* 55 FR 1419. On October 17, 2006, EPA retained the 24-hour PM<sub>10</sub> NAAQS at 150 µg/m<sup>3</sup> and revoked the annual PM<sub>10</sub> NAAQS. *See* 71 FR 61144. Accordingly, in the February 3, 2010, SIP submission, NC DENR incorporated revisions to state rule 15A NCAC 02D .0409 “PM<sub>10</sub> Particulate Matter” that update the rule for consistency with the 2006 PM<sub>10</sub> NAAQS.

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<sup>1</sup> On December 14, 2012, EPA strengthened the primary annual PM<sub>2.5</sub> NAAQS to 12.0 µg/m<sup>3</sup> and retained the 24-hour PM<sub>2.5</sub> NAAQS at 35 µg/m<sup>3</sup>. *See* 78 FR 3086 (January 15, 2013).

### **III. Response to Comments**

On May 23, 2013, EPA received a comment from one member of the general public. While the comment was generally in support of EPA's action, EPA withdrew the direct final rule because the comment could be interpreted as adverse. A summary of the comment and EPA's response is provided below.

**Comment:** The commenter noted that EPA revised the PM<sub>2.5</sub> NAAQS in 2012, and he recommended that EPA "approve the SIPs as submitted, with a further recommendation to submit a revised SIP reflecting the new standard within a reasonable amount of time (as determined by EPA)."

**Response:** Although EPA recently updated the annual PM<sub>2.5</sub> NAAQS, the State submitted its SIP revision prior to the December 14, 2012, promulgation of the new standard, published on January 15, 2013 (*see* 78 FR 3086). As mentioned above, NC DENR submitted its SIP revision to update the PM NAAQS on February 3, 2010, in response to EPA's promulgation of the 2006 PM NAAQS. EPA believes that it is appropriate to approve North Carolina's February 3, 2010, SIP revision, as it reflects the PM NAAQS in effect at that time, these NAAQS remain in effect, and the 2012 PM<sub>2.5</sub> NAAQS was not promulgated at that time. EPA notes that today's action does not relieve North Carolina of any current or future requirements regarding the 2012 PM<sub>2.5</sub> NAAQS and that NC DENR is currently working on a SIP submittal to adopt the 2012 PM<sub>2.5</sub> NAAQS.

#### **IV. Final Action**

EPA is approving the portions of North Carolina's February 3, 2010, SIP revision that relate to the PM NAAQS because they are consistent with the PM NAAQS in effect at the time of submittal.

#### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the

Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).



**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 16, 2014.

Heather McTeer Toney,  
Regional Administrator,  
Region 4.

40 CFR part 52 is amended as follows:

**PART 52- APPROVAL AND PROMULGATION OF IMPLEMENTATION  
PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

**Subpart II – North Carolina**

2. Section 52.1770 (c) is amended under Table 1, at Subchapter 2D Air Pollution Control Requirements, Section .0400 Ambient Air Quality Standards by revising the entries for “.0409,” and “.0410” to read as follows:

**§52.1770 Identification of plan**

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(c)\* \* \*

TABLE 1—EPA APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
<b>Subchapter 2D Air Pollution Control Requirements</b>				
**	**	*	*	*
<b>Section .0400 Ambient Air Quality Standards</b>				
**	**	*	*	*
Section .0409	Particulate Matter	1/1/2010	[Insert date of publication in <u>Federal Register</u> ] [Insert <u>Federal Register</u> citation]	
Section .0410	PM <sub>2.5</sub> Particulate Matter	1/1/2010	[Insert date of publication in <u>Federal</u>	

			Register] [Insert <u>Federal</u> <u>Register</u> citation]	
**	**	*	*	*
*	*	*	*	*

[FR Doc. 2014-15151 Filed 06/27/2014 at 8:45 am; Publication Date: 06/30/2014]